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UNITED STATES DISTRICT COURT
 DISTRICT OF OREGON
 PORTLAND DIVISION

)	Case No. 3:22-cv-00903-YY
VERITAS ALLIES LLC, an Oregon)	
Limited Liability Company,)	PLAINTIFF’S RESPONSE TO
)	DEFENDANT’S MOTION FOR
Plaintiff,)	SUMMARY JUDGMENT
)	
v.)	
)	
CYNTHIA FREE; an individual; and)	
HEATHER SCHIAPPACASSE, an)	
individual,)	
)	
_____)	
)	
Defendants.)	
)	

I. INTRODUCTION

The parties held a one-hour hearing on personal jurisdiction in front of the Honorable Judge Plank, who ruled against Defendant from the bench. Defendant now brings a substantially similar motion, without offering any new, material evidence, cases, or context. What makes the decision to take second swing more confusing is that the deposition of Defendant has now taken

1 place and her testimony established Defendant’s numerous uses of Oregon residents, Oregon
 2 tools, and Oregon targets that give rise to the present action. To name a few, Defendant made
 3 hundreds of calls to Ms. Free, an Oregon resident and located in Oregon for all relevant conduct
 4 to coordinate on their conspiracy to, as Defendant put it in her text message to MS. Free, ““...
 5 get him out of the industry once and for all. I have enough power to where people will listen to
 6 me. What did you mean by that?” Defendant also contacted and coordinated with another
 7 Oregon resident Jean Gordon for the same purpose, generating over fifty pages of text messages.
 8 The evidence will show Defendant only started communicating with Ms. Free and Ms. Gordon
 9 after the SIHA conference and that there was no purpose to her communications with the two
 10 other than to “destroy” Mr. Vizzini and his companies.

11 Defendant targeted the Oregon Secretary of State for one outlet of her attack. She
 12 targeted Veritas’ clients and talked with its employees. Finally, and with evidence that wasn’t
 13 even before Judge Plank, Defendant negotiated and executed a contract with Veritas on behalf of
 14 her consulting business, referred Veritas clients, introduced its executives to clients, considered
 15 investing \$100,000 and being offered employment with the company.

16 This was a long introduction... but it could be longer because the evidence supporting
 17 jurisdiction and damages is plentiful and, therefore, the motions should be denied.

18 19 II. SUMMARY OF THE UNDISPUTED FACTS

20 The following is an overview of the undisputed facts of the case. **Sections A, B, and C**
 21 **are entirely supported from citations to Defendant’s deposition and Defendant’s text**
 22 **messages, so they truly are undisputed facts.** The only exception to this is the reference to the
 23

1 Marketing Agreement which is a contract signed between the parties and also admitted to in
2 Defendant's deposition testimony.

3 A. While attending conferences on behalf of Veritas and its subsidiaries, Mr. Vizzini and
4 Defendant met as early as 2017 and over time had frequent communications as potential
5 business partners and that lead to Defendant negotiating and entering into one contract with
Veritas' subsidiary and Defendant almost investing \$100,000 in the business, and
Defendant being offered a job offer.

6 Defendant and Mr. Vizzini first met at a health care conference and have known each other
7 since 2017. (HS Dep. Tr. at 36: 16-25, to 37: 1-11) Defendant and Mr. Vizzini started discussing
8 business as early as 2017 or 2018. (HS Dep. Tr. at 36: 16-25, to 37: 1-11). According to
9 Defendant, Mr. Vizzini would encourage the two to do business together and Defendant would
10 request information from Mr. Vizzini. (HS Dep. Tr. at 36: 16-25, to 37: 1-11). Starting in 2019,
11 they communicated monthly and merged business and personal affairs in various ways. (HS Dep.
12 Tr. at 78: 19-23). Defendant entered into a marketing agreement with Veritas, referring work to
13 them, and also made referrals to David Vizzini's business, Veritas. (HS Dep. Tr. at 24: 1-11). As
14 Defendant puts it, "David asked me to make introductions for him. And I did". (HS Dep. Tr. at 24:
15 1-11). She introduced Veritas' president and Mr. Vizzini to potential customers at the SIIA
16 conference. (HS Dep. Tr. at 42: 2-12). The production record generated 235 pages of text messages
17 between Mr. Vizzini and Defendant. **Declaration of Engrav.**

18 Defendant conducted a business meeting with the Veritas executive team at the SIIA
19 conference in October of 2021. (HS Dep. Tr. at 40: 15-20). Present at the meeting was Defendant,
20 Josh Bailer an executive with Veritas and also Mr. Vizzini, it's CEO and majority owner. *Id.*
21 Defendant and Mr. Vizzini discussed business, including Veritas' financial condition and payroll,
22 and Defendant considered investing \$100,000 to help with payroll but ultimately did not invest.
23 She did offer to provide structure and internal growth assistance. (HS Dep. Tr. at 59: 16-25, to 60:

1 1-5). They had multiple conversations pertaining to her potential investment in the business,
2 estimating the conversation lasted 1.5 hours. (HS Dep. Tr. at 29: 15-25, to 30 1-5). At the
3 conclusion of the meeting, Defendant told Mr. Vizzini, Defendant ultimately did not invest in
4 Veritas. (HS Dep. Tr. at 29: 15-25, to 30 1-5). However, Defendant informed Mr. Vizzini, “I told
5 him that if he needed help with his business, I would help him provide structure and help him grow
6 internally...” (HS Dep. Tr. at 29: 15-25, to 30: 1-5).

7 In 2019, Defendant negotiated an agreement with Equitas DX (Ex. 1). The Agreement was
8 executed by Defendant’s business partner. *Id.* The Agreement provides Oregon as the venue and
9 law source. *Id.* At her deposition, Defendant demonstrated knowledge of intimate business
10 functions of Veritas, discussing Veritas’ propensity to do business with TPAs, pharmacy benefit
11 managers, and discussing why they would be a good fit for Veritas’s business because Veritas uses
12 reference-based pricing mechanisms that he could sell to the TPAs and other listed entities. (HS
13 Dep. Tr. at 41: 15-20). Under the Agreement, if Defendant’s clients asked for RBP services and
14 used Veritas (via its subsidiary Equitas)’ services, her business would get a fee. (HS Dep. Tr. at
15 49: 5-22).

16 Defendant distinguished between two different business conversations she was having with
17 Veritas. She explains there was both the “rolodex idea” where clients were accumulated and
18 referred out, and also the marketing agreement. (HS Dep. Tr. at 51: 22-25, to 52: 1-16). Had the
19 meeting between Veritas and Defendant moved forward, it would have resulted in another
20 marketing agreement between her and Mr. Vizzini’s companies. *Id.*

21 Defendant conducted a business meeting with the Veritas executive team at the SIIA
22 conference, providing a list of potential clients she felt would be a good fit for their business and
23 physically introducing them to Veritas. (HS Dep. Tr. at 42: 2-12). The Defendant then physically

1 introduced the clients to Veritas. (HS Dep. Tr. at 42: 2-12). These introductions happened at the
 2 SIIA Conference. (HS Dep. Tr. at 42: 2-12). Some of the clients that were introduced by Defendant
 3 were \$60mm businesses. *Id.* She also had a meeting with the Veritas Allies team to evaluate HC
 4 Consulting company doing business with Veritas and was presented with financial numbers,
 5 concluding that Veritas' financial condition was not satisfactory. Defendant negotiated with both
 6 Veritas and directly with its subsidiary Equitas:

7 Q. Okay. So what -- what would -- can you help me understand the difference
 8 between that marketing agreement and this Rolodex concept that you just
 mentioned?

9 A. We didn't use Equitas because we didn't believe in the product. We didn't like
 10 the product. And we have -- we reserve the right to work with who we want to
 work with. I told David that multiple times over -- from 2019. David knew that we
 weren't going to do -- if he couldn't produce something viable that I could push out
 into the market, I wasn't going to do business with him, period.

11 Q. So you just mentioned 2019. So you and Mr. Vizzini were discussing doing
 business as far back as 2019?

12 A. For Equitas.

13 Q. An And then later in 2021, Veritas. Is that right?

A. Possibility. Yeah, it was a possibility. (HS Dep. Tr. at 50: 8-25, to 51: 1).

14 Defendant made multiple phone calls with David Vizzini and Veritas staff while he was located in
 15 Oregon. After they both attended a conference prior to October 1st, 2021, Defendant engaged in a
 16 telephone call with Mr. Vizzini and his executive assistant Sherri Freeman. (HS Dep. Tr. at 34:
 17 12-21). Around 2019 to 2020 Mr. Vizzini and Defendant also discussed employment, and Mr.
 18 Vizzini made an employment offer to Defendant. (HS Dep. Tr. at 81: 9-22).

19 B. Defendant initiated numerous phone calls with numerous Oregon residents to execute her
 20 plan of "destroying Veritas"

21 *i. Defendant's solicitations and conspiracy with Oregon resident Ms. Free.*

22 After Defendant and Mr. Vizzini broke up, she called his ex-wife Ms. Free. (HS Dep. Tr.
 23 at 72: 2-14). They did not know each other prior to the breakup. (HS Dep. Tr. at 72: 2-14). They

1 became, “friends”. (HS Dep. Tr. at 72: 2-14). That friendship formed a couple of months prior to
 2 Ms. Free speaking to Defendant about taking down the S.O.S. Registration. (HS Dep. Tr. at 72:
 3 2-14). Defendant and Ms. Free, who is still located in the state of Oregon, still talk to this day.
 4 (HS Dep. Tr. at 129: 20-25, to 130: 1-4). From the time period of shortly after the conference and
 5 continuing, Defendant describes the frequency of their conversations as, “Possibly. I mean, we
 6 talked a lot on the phone. I mean, Cindy and I spent a lot of time on the phone talking to each
 7 other.” (HS Dep. Tr. at 129: 20-25, to 130: 1-4). After the conference, and during the time
 8 Defendant was promising to damage Veritas, Defendant made “hundreds of phone calls” with Ms.
 9 Free, who Defendant understood to be in Oregon. Defendant purchased a plane ticket to Oregon
 10 in the midst of these conversations. (HS Dep. Tr. at 167: 21-25, to 168: 1-7). Defendant sent
 11 multiple messages concerning her flight details (Ex. 2 at 24-28). Defendants’ plan was to meet
 12 with Ms. Free and also with Mr. Vizzini’s former partner Jean Gordon (HS Dep. Tr. at 167: 21-
 13 25, to 168: 1-7). At the same time, Defendant invited her best friend Kim Sharbatz, to travel from
 14 Michigan to join them. (HS Dep. Tr. at 168: 22-25, to 169: 1-25 to 170: 1-25). Ms. Sharbatz is a
 15 VP of marketing at Blue Cross, another entity in the health care industry, along with Defendant
 16 and Veritas. *Id.*

17 Defendant was dishonest in her deposition about her communications with Ms. Free
 18 pertaining to the take down of the S.O.S. Registration.

19 Q. Did you assist Ms. Free in the registration with the Secretary of State?

20 A. No.

21 Q. Did you consult with her about it?

22 A. No.

23 Q. Did you discuss how to do it and why to do it with her?

A. No.

Q. Were you aware that it would have a negative impact on Veritas Allies, LLC?

A. I didn't know she was going to do it. (HS Dep. Tr. at 73: 13-23)

1 In contrast to that testimony, Defendant and Ms. Free discussed Veritas and its subsidiaries
2 secretary of state registration as early as October 7th, 2021. (Ex. 2, at 7). They had multiple phone
3 calls between this point and the ultimate takeover of the Veritas Allies name. (Ex. 2 at 1-20).
4 Defendant asked Ms. Free, “How do we secure the Veritas Allies name Nationally.” (Ex. 2 at 24).
5 When Ms. Free went through with the idea, Defendant stated via text, “He’s going to FREAK the
6 fuck out” and then added later, “He deserves it”. She states, “No one will touch him after this
7 business fails.” Shortly after that message, Defendant writes, “Who was that guy at 6 degrees you
8 wanted me to talk to? Scott?” (HS Dep. Tr. at 155: 3-10). Six Degrees is a former employer of
9 Mr. Vizzini and an Oregon company. (Dec. of Engrav). Defendant also invited her friend, a BP
10 of Marketing at Blue Cross (another company in the same industry as Veritas and Defendant) to
11 “collaborate on VA”. (Ex. 2 at 30). This individual was later invited to Portland to join Ms. Free
12 and Defendant. *Id.* In addition, Defendant recommend to Ms. Free that they involve Defendant’s
13 friend who works as a producer at fox news to “Blow this...up”. (Ex. 2 at 31). Plaintiff’s case
14 will demonstrate that this conspiracy orchestrated by Defendant and Ms. Free was all to maximize
15 the amount of harm on Veritas.

16 Defendant also was in constant communication with Ms. Free after she received a demand
17 letter from Veritas in regard to the SOS registration.” (Ex. 2 at 35-36). In response to the demand
18 letter, Defendant told Ms. Free, “I wouldn’t dissolve it. Keep it. It will drive him crazy” (Ex. 2
19 at 36). She later told Ms. Free, “But his wasn’t filed. No one in Oregon was using it when you
20 filed it. IT was dissolved. You should talk to your attorney about it AND if they say ok, get it
21 trademarked ASAP then he can NEVER use it” (Ex 2 at 37) . Defendant also texted Ms. Free after
22 she had sent a link to the SOS cite and said, “Call them tomorrow and see if you can transfer, I’ll
23 pay your fee.” Then later she added, “you dissolved it and I grabbed the name.” (Ex. 2 at 39).

1 She wanted Ms. Free to transfer it to her, and said, “How can we transfer or do I just go register it
2 before he does again?” (*Id.* at 40).

3 On October 8th, 2021, Defendant recommend to Ms. Free that they report Mr. Vizzini to
4 the IRS, despite having no tax documents or any information whatsoever supporting IRS
5 misrepresentation. (Ex. 2 at 16). On November 4th, 2021, Defendant also invites Ms. Free to
6 HCAA, another healthcare conference, which Ms. Free has no business being at except for the
7 conspiracy between the two. (Ex. 2 page 34).

8 ii. *Defendant engaged in an absurd amount of text messages and outreaches*
9 *to Mr. Vizzini’s former romantic partner, Jean Gordon.*

10 On October 8th, 2021, Defendant spoke to Ms. Gordon for an hour on the phone. (Ex. 2 at
11 16). Moreover, Defendant compulsively texted Ms. Gordon in a blatant attempt to manipulate Ms.
12 Gordon to Defendant’s position. (Ex. 15.) Within a few months of the SIIA conference, Defendant
13 had generated over fifty pages of text messages with Ms. Gordon. *Id.*

14 C. Defendant specifically targeted Veritas customers and contacted them with the express
15 purpose of ruining Veritas.

16 Defendant admitted to sending a text message where she said, “I reached out to all of my
17 people who know him, and he’s going to definitely feel that pressure business-wise.” (HS Dep. Tr.
at 134: 1-25 to 135: 1-5).

18 Q. Right here you say: I’m going to **get him out of the industry once and for all.**
19 I have enough power to where people will listen to me. What did you mean by that?

20 A. You know, it’s just girl talk, you know, as far as that goes. We were just, you
21 know, talking about how bad David treats people and women, and that was just us
22 letting off some steam. I think they call it, like, locker room talk.

23 Q. That’s all that was?

A. Correct. (HS Dep. Tr. at 160: 10-25) (*emphasis added*)

1 Defendant told Ms. Free that's what she was doing. "No one can identify any of his clients
2 outside of Mary Beth... My friends' company has a contract out with him, but he [the friend]
3 hasn't signed it." (Ex. 2 at 38) (*context added*).

4 On October 7th, 2021, Defendant pasted a text message to Ms. Free, that she had previously
5 sent Mr. Vizzini, It reads:

6 God, I'm so bummed you couldn't be at this dinner tonight!!! Talk about a power
7 couple and literally ruling the world. I just closed single handily closed two of the
8 biggest deals of my life and NOW... I have to take 6 Degrees in because you are a
9 sociopathic narcissist – of course if you would have been more up front about it,
10 we could have worked together on it... But thankfully, I'm just as diabolical &
11 sociopathic as you – but, I've learned that I need a little ebit of insight & empathy
12 which allows me to contain my sociopathic tendencies. THANK GOD for maslows
13 NOW (Ex. 2 at 11).

14 The record demonstrates that Defendant then made good on her threat and did target 6
15 Degrees Health LLC. On October 9th, 2021, Defendant sends a message to Ms. Free saying, "Who
16 was the guy at 6degrees you wanted me to talk to? Scott." (Veritas Exhibit 2 Page 20). There is
17 no responsive text message, and Plaintiff will demonstrate at trial that the parties discussed such
18 details on the phone in-between messages.

19 Q. All right. So you sent this to Mr. Vizzini's ex-wife. What did you mean
20 by "power couple"?

21 A. Well, that's what David called us. He called us a power couple. You
22 know, we had a Dallas location and a Portland location, and the two of us
23 together were going to be able to run the industry.

Q. like a partnership concept?

A. No. He called us a power couple because he wanted to spend half of his
time in Dallas with me and he wanted me to spend half of my time in
Portland with him.

Q. And you reference two of the biggest deals of your life. What clients
were those with?

A. I don't think that matters because he wasn't involved in any of those, and
Veritas was never even a -- a discussion on that, so -- and they didn't happen
in Oregon.

Q. I stand by the question. I'm going to ask you to answer the question.

A. I don't remember.

1 Q. You don't remember the two biggest deals of your life?

A. I don't.

2 Q. I just want to make this as clear as possible. These are the two biggest deals of
3 your life. And this is 2021, and some time's passed. And you don't recall these
4 clients at all?

A. I don't.

(HS Dep. Tr. at 143: 1-25)

5 D. Damages

6 For the purposes of this motion for summary judgment, Plaintiff is putting forward four
7 categories of damages:

8 i. *Veritas incurred costs via remedying the SOS Filing that Defendant helped* 9 *take from Veritas Allies.*

10 Ex. 3 demonstrates that Veritas incurred \$250 in making multiple filings with the SOS as
11 a result of Defendants' conspiracy to acquire the registration. This amount is more than Veritas
12 would have incurred if it were only required to renew.

13 ii. *Loss of the Leading Edge Administrators Contract*

14 Leading Edge Administrators signed a contract with Veritas Allies on or about September
15 22nd, 2020. On October 10, 2021, Defendant says, "Tom Cardwell & John Hennessy want to chat
16 with me." (Ex. 2 at 21). Mr. Cardwell was Veritas' point of contact and a decision maker at
17 Leading Edge Administrators. (Declaration of Barnes). Defendant and Mr. Cardwell were also
18 friends and had known each other for over about 10 years. (HS Dep. Tr. at 157: 5-22). Shortly
19 after the above text message, Defendant provides:

20 "I'm going to get him out of the industry once and for all"

"I have enough power to where ppl will listen to me"

(Ex. 2 at 22).

21 Then on November 24th, 2021, Defendant provides, "Tom [Cardwell] is pulling 10k lives."
22 (Ex. 2 at 42). The significance of this statement requires some industry context. Referenced Base
23

Pricing companies such as Veritas will obtain work and bill clients on a Per Member Per Month basis. (Ex. 10 and 13). The amount of members is also referred to as the number of lives. *Id.* Therefore, when Defendant says Mr. Cardwell is pulling 10k lives, she is saying that Leading Edge Administrators is taking away 10,000 members per month from Veritas revenue stream. *Id.* Then, shortly after Defendant tells Ms. Free of this pending move, it becomes reality. (Ex 4 and 5.) Leading Edge ultimately terminated its entire business relationship with Veritas on or around March of 2022, just three months after Defendant's message to Ms. Free. *Id.*

Ex. 1 is a copy of the Agreement between Leading Edge Administrators and Veritas. **Ex. 6** is financial information of Veritas demonstrating revenue from Leading Edge Administrators prior to Defendant's successful efforts to have Leading Edge Administrators affect their business relationship with Veritas.

iii. Lost revenue from Diversified Benefits Administrators ("DBA") due to Defendant's conduct.

Ms. Donalson is the President of DBA. (Ex. 11). She has been a long-time customer of Veritas. Ms. Donalson states that Defendant made attempts to prevent potential customers from meeting with Veritas, that she spoke maliciously about the company out of spite, and that she made statements to Ms. Donalson that caused her to question her relationship with Veritas which cost Veritas approximately \$175,000 to \$225,000. *Id.*

E. Plaintiff has raised discovery issues with Defendant, and although Defendant feels that it has provided more than sufficient evidence in this MSJ Response, Plaintiff's Production deficiencies are subject to reasonable delays from Plaintiff's counsel's office, and Plaintiff reserves the right to supplement evidence to support this response pending additional production.

Supporting the declaration of Grant Engrav, is Exhibit 7, which is a true and correct copy of email correspondence with opposing counsel. Counsel for Defendant has had reasonable, and

1 material complications at its law firm, which have delayed production. At Defendant’s testimony,
 2 several documents were identified that were not produced. Counsel for Plaintiff corresponded
 3 with counsel for Defendant on this issue, but the matter has not been resolved yet. In the event
 4 that relevant production occurs following submission of this Response, Plaintiff’s position is that
 5 Plaintiff is permitted to supplement exhibits to support its Response.

6 7 III. LAW AND ARGUMENT

8 A. Summary Judgment Standard

9
 10 Summary judgment is appropriate when “the movant shows that there are no genuine
 11 disputes of material fact and that the movant is entitled to judgment as a matter of law.” Fed. R.
 12 Civ. P. 56(a). The movant has the burden of demonstrating the absence of questions of material
 13 fact for trial concerning any elements of the claims. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
 14 256 (1986). A material fact is genuinely in dispute if “the evidence is such that a reasonable jury
 15 could return a verdict for the non-moving party.” *Id.* at 248. The court must examine the record as
 16 a whole and make reasonable inferences about the facts in favor of the nonmovant. *Tolan v. Cotton*,
 17 134 S. Ct. 1861, 1866 (2014); *Scott v. Harris*, 550 U.S. 372, 378-80 (2007). A court may grant
 18 judgment to a party on all or part of a claim. Fed. R. Civ. P. 56(a); *see, e.g. Wang Labs, Inc. v.*
 19 *Mitsubishi Elecs. Am., Inc.*, 860 F. Supp. 1448, 1450 (C.D. Cal. 1993).

20 B. Organization of Argument

21 As a preliminary matter Defendant enumerates its motion numbers differently in different
 22 parts of its memo—happens to the best of us—and this paragraph is simply to get everyone on the
 23 same page. On page two of its motion, Defendant identifies its motions as 1) related to personal

1 jurisdiction, 2) related to damages, and 3) related to personal jurisdiction. However, the body of
2 the motion has Motions 1 and 2 relating to personal jurisdiction, which makes more sense as the
3 two issues are related. Therefore, this Response will identify and treat Motions 1 and 2 as
4 pertaining to the personal jurisdiction issues raised by Plaintiff.

5 C. Personal Jurisdiction is Proper in Oregon for both claims.

6 Plaintiff accepts Defendant’s outline of the three-prong test used by the 9th Circuit. The
7 cases it cites are on-point as well—albeit some more than others. Defendant cites to *Walden v.*
8 *Fiore*, which is on point, however, is a cornucopia of provisions of rulings that benefit Veritas.
9 571, US 277 (2014). *Walden* provides, “And although physical presence in the forum is not a
10 prerequisite to jurisdiction, physical entry into the State — either by the defendant in person or
11 through an agent, goods, mail, or some other means — is certainly a relevant contact. *Walden v.*
12 *Fiore*, 571 US 277, 285, 134 S Ct 1115, 1122, 188 LEd2d 12, 21 (2014) (Internal Citations
13 omitted). *Walden* provided a thorough analysis of the *Calder v. Jones* case, which is directly on
14 point because the claims at issue were tort based. *Calder v. Jones*, 465 US 783, 104 S Ct 1482, 79
15 LEd2d 804 (1984).

16 *Walden* provides the following summary of *Calder*, “California actress brought a libel suit
17 in California state court against a reporter and an editor, both of whom worked for the National
18 Enquirer at its headquarters in Florida. The plaintiff’s libel claims were based on an article written
19 and edited by the defendants in Florida for publication in the National Enquirer, a national weekly
20 newspaper with a California circulation of roughly 600,000” *Walden v. Fiore*, 571 US 277, 286-
21 87 (2014). *Walden* held California’s personal jurisdiction was consistent with due process and
22 found, “those forum contacts to be ample: The defendants relied on phone calls to “California
23 sources” for the information in their article; they wrote the story about the plaintiff’s activities in

1 California; they caused reputational injury in California by writing an allegedly libelous article
 2 that was widely circulated in the State; and the “brunt” of that injury was suffered by the plaintiff
 3 in that State. *Id. at 287*. In this case, Defendant’s actions are similarly calculated and targeted into
 4 Oregon, specifically her many calls to Cynthia Free (Ex. 2 and 8), Jean Gordon (Ex. 15), David
 5 Vizzini, other Veritas Staff (Ex. 8), her coordination with altering the Oregon Secretary of State
 6 Business Registration (Ex. 8), business contract with Veritas (Ex.1), and targeting former
 7 employers of David Vizzini could hardly be more tailored towards the state she now objects to
 8 hosting the court consequences backstopping her tortious actions.¹

9 The Supreme Court found the “crux” of *Calder* was the reputation-based effects of the
 10 alleged libel. *Id. at 287*. The present claims have a similar dynamic to *Calder*, but the nature of
 11 an intentional interference claim also must contemplate the tools that the Defendant used to bring
 12 about the harmful interference, and her target’s location. Nearly all of the tools, all outlined above,
 13 were Oregon based as was her target, Veritas and David Vizzini.

14 Argument on the application of the undisputed facts to the three-prong test follows:

- 15
 16 i. *First prong, “The defendant must purposefully direct [her] activities or consummate*
 17 *some transaction with the forum or resident thereof; or perform some act by which*
 18 *[her] purposefully assails himself of the privilege of conducting activities in the*
 19 *forum, thereby invoking the benefits and protections of its laws.” Schwarzenegger v.*
 20 *Fred Martin Motor Co., 374 F3d 797, 802 (9th Cir 2004).*

21 The defendant purposefully directed her activities towards Oregon. Defendant’s target was
 22 Mr. Vizzini and his companies, namely Plaintiff Veritas Allies. Defendant sent the following text
 23 messages to Ms. Free (who is an Oregon resident and was residing in Oregon at all times) making
 clear her intentions and her target:

¹ The facts surrounding these factual positions are outlined in detail in the factual summary section of the brief.

- 1 • “I’m going to ruin Mr. Vizzini’s business” (HS Dep. Tr. at 113, 14-25 to 114, 1-2)
- 2 • “I’m going to get him out of the industry once and for all. I have enough power to where
people will listen to me. What did you mean by that?” (HS Dep. Tr. at 160: 10-25)
- 3 • “I reached out to all of my people who know him, and he’s going to definitely feel that
pressure business-wise.” (HS Dep. Tr. at 134: 1-25 to 135: 1-5).
- 4 • “I’m putting him to bed now, I’m sure he’ll resurface at some point”. (Ex. 2 at 6.)
- 5 • “I think we should call the IRS on him”. (Ex. 2 at 16).
- 6 • “No one will touch him after his business fails” (Ex. 2 at 19).

7 The above clearly demonstrates her motive and target were to ruin Mr. Vizzini’s business Veritas,
8 both he and the company are Oregon based. So like the *Calder* case, she was trying to achieve a
9 result in the specific territory of Oregon. But the target of her actions isn’t the only aspect of how
10 Defendant purposefully directed her activities towards Oregon. She made outreaches to Oregon
11 individuals Cindy Free and Jean Gordon to assist her in her mission, just as the journalists in *Calder*
12 called witnesses in California. (Ex. 2 and Ex. 15.) She coordinated with Ms. Free on the take over
13 of Plaintiff’s Oregon Secretary of State business Registration. The communication and
14 coordination with MS. Free was compulsive and unhinged. She estimates hundreds of calls to Ms.
15 Free, who she “became friends with” shortly after the SIIA conference. (HS Dep. Tr. at 156: 1-
16 22). A review of their text messages indicates they went to sleep discussing the demise of Mr.
17 Vizzini and his company and woke up doing the same without missing a beat. She bought a plane
18 ticket to come Portland, although the trip was cancelled last minute. (HS. Dep. Tr. 20, 8-22.) She
19 invited her colleagues and friends to come to Portland, Oregon to assist. (HS Dep. Tr. at 168: 22-
20 25, to 169: 1-25 to 170: 1-25). She contacted Mr. Vizzini’s previous, Oregon employers. (Ex. 2
21 at 30).

22 Alternatively, she “consummated a transaction.” She was in perpetual business
23 conversations with Veritas, with one deal being executed and one deal being negotiated but falling
apart right towards the point her retaliation commenced. Ex. 1, and (HS. Dep. Tr. at 20, 8-22.)

Defendant also heavily discussed business with Mr. Vizzini, and came close to investing \$100,000 in the company. (HS. Depo 59, 16-25). That transaction did not consummate, however, she did refer Veritas clients and make introductions to the business. *Id* at 23, 2-6.

ii. *Second prong: The claim must be one which arises out of or relates to the defendant's forum related activities²; and*

The only claim at issue is intentional interference with economic relations—there are two counts. The Oregon Uniform Civil Jury Instruction provides the elements as follows:

The plaintiff had a [contract / professional or business relationship / prospective economic relationship / prospective inheritance]; (2) The defendant was not a party to the [contract / professional or business relationship / prospective economic relationship / prospective inheritance]; (3) The defendant intended to interfere with the [contract / professional or business relationship / prospective economic relationship / prospective inheritance]; (4) The defendant interfered through improper means or for an improper purpose in one or more of the ways alleged by the plaintiff; (5) The defendant's interference caused harm to the [contract / professional or business relationship / prospective economic relationship / prospective inheritance]; and (6) The defendant's interference resulted in damages to the plaintiff.

UCJI 40.03, *citing Babick v. Oregon Arena Corp.*, 333 Or 401, 410–11, 40 P3d 1059 (2002); *McGanty v. Staudenraus*, 321 Or 532, 545–51, 901 P2d 841 (1995).

Plaintiff relies on the same facts argued under prong one, to incorporate and support and its position under prong two. The elements of the claim are provided in full because it's clear that the fundamental nature of this claim has to do with the plaintiff's contracts, which was the target of most of Defendant's interference. Intent is also an element, and Defendant's many smoking gun statements provided under the first prong demonstrate her intent was targeted towards an Oregon man and an Oregon company. The fourth element involves improper means, and both Defendant's actions with the S.O.S and using Ms. Free and Ms. Gordon and phone calls into the state were

² *Id.*

1 tailored around Oregon as the forum. Finally, the harm is clearly local, as Veritas is here and the
 2 damages befell them here—particularly relating to the S.O.S. registration.

3 *iii. Prong three: The exercise of jurisdiction must comport with fair play and substance*
 4 *justice, i.e. it must be reasonable.*³

5 If a person calls an Oregon resident and uses them to assist in directing my arrow towards
 6 another Oregon resident, and that person hits that Oregon resident, does it make any sense for that
 7 person to be surprised they are being sued in Oregon? They may point out that they haven't gone
 8 into Oregon, but... their arrow has. In fact it hit its target, which here, is an Oregon target. Plaintiff
 9 has offered copious evidence of Defendant's intent—so didn't Defendant get exactly what she
 10 wanted? So why the surprise and where is the unfairness to Defenadnt?

11 Another case establishes this common sense principal,. In *State ex rel. Advanced Dictating*
 12 *Supply, Inc. v. Dale*, In *State ex rel. Advanced Dictating Supply, Inc. v. Dale* the Oregon Supreme
 13 Court upheld jurisdiction over a nonresident defendant in a defamation action against the
 14 contention that there was no local act. 269 Or 242, 246–47, 524 P2d 1404 (1974). The Court held
 15 that when a defendant, located outside the State of Oregon, knowingly sends a false statement into
 16 Oregon, intending that it should be relied on to the injury of a resident of the Oregon, the defendant,
 17 for jurisdictional purposes, has acted within the State of Oregon. The present case is similar, and
 18 although much of the personal jurisdiction case law in the state has to do with widgets or tort
 19 assaults, the fundamentals of the Dale case are the fundamentals of this case. As alleged, Defendant
 20 acted with intent that her statements would make their impact in Oregon, upon Veritas. She also
 21 coordinated her efforts for co-conspirators towards Ms. Free and Ms. Gordon, and the subject of
 22 her vendetta was an Oregonian.

23

³ *Id.*

Moreover, on the subject of substantial justice, Defendant's consulting business executed its contract with Veritas and elected an Oregon form and choice of law provision. That directly demonstrates the lack of a burden because Defendant has made such a choice in the past.

The Court should deny the Defendant's motions pertaining to personal jurisdiction because her actions, tools, and targets were all Oregon based, and she already lost in state Court on the issue and the evidence against her as only gotten more substantial in favor of personal jurisdiction in Oregon.

D. Defendant moves against damages, but the record supports plenty and the motion should be denied.

i. Damages pertaining to Plaintiff's First Cause of Action.

For the purposes of this motion against Plaintiff's first cause of action, Plaintiff puts forward four categories of damages. The undisputed facts section outlines 1) the declaration of Mary Beth Donaldson, owner of Diversified Benefits Administrator supporting Veritas' claim that Defendant's actions caused Plaintiff to lose significant portions of her business, 2) the Leading Edge Administrators contract and termination letter, the financial invoices pertaining to the loss of the leading edge contract, 3) the financial damages incurred via the secretary of state filings, and 4) the labor and payroll costs incurred by Veritas in dealing with the S.O.S. registration.

1. Diversified Benefits Administrators

Ms. Donaldson's declaration provides direct testimony from a Veritas customer that Defendant did exactly what Veritas claims. Ms. Donaldson's testimony supports Veritas position that Defendant reached out to customers and targeted David Vizzini's businesses and made representations about the company aimed to deprive Veritas of business. (Ex. 11 at ¶ 1,2,3) Ms. Donaldson has also provided a range of revenue she diverted from Veritas in response to the

1 allegations. (Ex. 11 at ¶ 5). Ms. Donaldsons' declaration speaks for itself and is directly supportive
 2 of Veritas' position.

3 2. Leading Edge Administrators

4 As outlined in the statement of facts section, Defendant texted Ms. Free that she talked
 5 with her longtime friend Tom Cardwell, and she said that Mr. Cardwell indicated he was going to
 6 drop his business with Veritas by 10,000 lives. ((HS Dep. Tr. at 157: 5-22 and Ex 2. Ex. 13 at ¶4,
 7 5) Three to four months later, Leading Edge Administrators terminated their agreement with
 8 Veritas completely out of the blue. (Ex. 4 and 5). Defendant has not put anything forward to
 9 suggest any other reason for the contract termination, and on a summary judgment standard, the
 10 uncontroverted evidence offered combined with the summary judgment deference Veritas
 11 receives, demonstrates the motion should be denied.

12 The damages related to Veritas S.O.S fees and payroll/labor costs are discussed in the next
 13 section.

14 *ii. Damages pertaining to Plaintiff's Second Cause of Action.*

15 At her deposition testimony, Defendant was asked:

16 Q. Let me ask you the question in a different way. What is the exact entity name of
 HC Consulting company? Is it LLC?

17 A. HC Consulting, LLC.

18 Q. What would happen if somebody took over the registration for that business?

19 A. Well, I guess we would have to rename our company, but we also wouldn't let our
 licensure lapse, so.

(Deposition of HS. 74, 16-24)

20 Defendant herself appears to understand the concept her brief doesn't. If a company wants
 21 to maintain its limited liability, if it wants to remain a party to the previous contracts it entered
 22 into, if it wants to market and trademark and do all of the things a business needs to do to earn
 23 revenue in a marketplace, it needs to operate under a consistent and identifiable name.

1 To be clear, plaintiff owns its mistake in letting its S.O.S. registration lapse. However, a
 2 company is entitled to reinstate an administrative dissolution, and this happens so often that the
 3 LLC statute provides the following protection to companies in this event:

4 1) A limited liability company that the Secretary of State administratively
 5 dissolved under ORS 63.651 (Procedure) may apply to the Secretary of State for
 reinstatement within five years from the date of dissolution. The application must:

6 ...

3)When effective, the reinstatement relates back to and takes effect as of the
 effective date of the administrative dissolution and the limited liability company
 resumes carrying on the limited liability company's business as if the administrative
 dissolution had never occurred.

8 ORS 63.651 (1) and (3).

9 Plaintiff had the option and right to reinstate its registration, and it would have been as if nothing
 10 happened. However, Defendant and her co-conspirator intervened for nefarious purposes as
 11 established above with the various smoking gun admissions from Defendant's deposition
 12 testimony. This act put Plaintiff in the position that Defendant says would force her to rename her
 13 company.

14 The declaration of Shane Barnes establishes two areas of damages that the jury could
 15 determine were causally linked to her unquestionably improper conduct. First, the extra re-
 16 registration charges incurred with making multiple filings with the S.O.S. Second, the
 17 labor/payroll hours of Veritas that were incurred in working with and explaining the situation to
 18 clients, calling the S.O.S. reconstituting contracts and other necessary and proper business efforts
 19 to resolve the issue.

20 Defendant knew about how her actions forced this labor on Veritas. In her deposition
 21 testimony, Defendant spoke about Veritas employee Eric Read had called one of her friends, who
 22 was a customer of Veritas. Bates Schiappacasse 52 was in front of Defendant, which was a text
 23

1 she sent that read, “HAHAHAHA Eric Read just called my friend and wants to have Equitas name
2 removed from the contract and have Veritas Allied added.”

3 Q. Okay. Okay. And then you say: Eric Reed just called my friend and wants to have the
4 Equitas name removed from the contract and have Veritas Allies added.

Who is Eric Reed?

A. I don't know.

Q. What was he talking about?

A. Obviously he was talking about a contract. I don't even know who I was talking to or
6 what friend I'm even -- even referring to. I just thought it was funny, since Veritas doesn't
7 own that name anymore, that they would want to change contracts to put them in their
name.

Q. Do you think that your message here in the middle of page 52 is about Mr. Vizzini?

A. I don't know.

Q. So you -- you have the Equitas --

A. I mean, when I say Veritas Allies, I assume it's about David Vizzini, yeah.

Q. It also says Equitas, which is another one of the companies. Right?

A. Yes.

Q. And you're telling me you don't know who the friend is or Eric Reed?

A. I don't know who -- what friend they're talking about. I don't know what friend I'm
12 talking about, so I don't know anything -- I don't -- I can't remember that. Eric, I don't
recall ever meeting an Eric Reed.

(HS Depo, 174, 22-25 to 175, 1-25)

13 Defendant is well connected, and was getting live reports from colleagues and industry
14 friends. The “HAHAH” in the text message tells the story of how Defendant was enjoying hearing
15 about Veritas Allies staff squirming and working to do damage control from hers and Ms. Free’s
16 sabotage. She knew it was wrong, which is why she denies knowing Eric Read, or who her friend
17 is.

18 To conclude the section, it must be noted that Defendant has offered virtually zero evidence
19 to support whatever her position might be. I guess we will find that out in her reply brief, but if
20 new evidence is raised for the first time, as it should have been in its motion, Plaintiff reserves the
21 right to supplement.

22
23 ///

1
2 IV. CONCLUSION

3 Defendant aimed squarely at Veritas and used Oregon contacts and resources to hit her
4 mark. The damages show she was successful, which is the basis for the present suit, and thus the
5 motion should be denied so that Veritas can prove its claims at trial.
6

7
8 Dated this 5th day of April 2023

9 By: /s/ Grant T. Engrav
10 Grant T. Engrav, OSB No. 133517
11 Of Attorney for Plaintiff
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CERTIFICATE OF SERVICE

I hereby certify that on April 5th, 2023, I served the preceding **PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** on:

Philip Nelson, OSB No. 013650

phil@slindenelson.com

Keith A. Pitt, OSB No. 973725

keith@slindenelson.com

___ By mailing a true and correct copy thereof by U.S. Postal Service, ordinary first-class mail, addressed to each attorney's last known address and depositing in the U.S. mail at Portland, Oregon on the date set forth above;

___ By mailing a true and correct copy thereof by U.S. Postal Service, certified mail, return receipt requested, addressed to each attorney's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth above;

___ By causing a true and correct copy thereof to be hand-delivered to the above-mentioned attorney's last known office address on the date set forth above;

___ By sending a true and correct copy thereof by overnight courier, addressed to each attorney's last known office address on the date set forth above;

___ By faxing a true and correct copy thereof to each attorney at each attorney's last known facsimile number on the date set forth above. At the time of service the attorney maintained a facsimile device at the attorney's office and the device was working at the time of service. Attached to this Certificate of Service is a printed confirmation of receipt of the message generated by my office's facsimile transmitting machine.

X By emailing a true and correct copy thereof to each attorney at each attorney's email address. Prior to service, the attorney's had agreed in writing to accept service via email.

Dated this 5th day of April 2023.

ENGRAV LAW OFFICE, LLP

By: /s/ Grant T. Engrav

Grant T. Engrav, OSB No. 133517

Of Attorney for Plaintiff

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